IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2007

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THE HONOURABLE MR. JUSTICE P. JYOTHIMANI

W.P.No.32980 of 2006 &
M.P.Nos.1 to 3 of 2006

R.Ramanathan . . Petitioner

Vs

1.Secretary to the Government,
Higher Education Department,
Fort St. George,
Chennai-600 009.

2.The Director of Collegiate Education,
E.V.K.Sampath Building,
College Road,
Chennai-600 006.

3.The Principal,
Government Arts College,
Ariyalur-621 713.

4.Dr.S.Mani,
Director of Collegiate Education,
E.V.K.Sampath Building,
College Road,
Chennai-600 006.

5.C.Kandasamy,
(Principal in Charge)
Head Department of Mathematics,
Government Arts College,
Ariyalur 621 713. . . Respondents

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Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records from the second respnodent and quashing the transfer order Na.Ka.En.10302/c3/2005 dated 6.9.2006 and consequent reliving order from the respondent 3, Na.Ka.En.614/aa/05 dated 7.9.2006 and direct the first respondent to take disciplinary action on the respondents 4 and 5.

For Petitioner : Mr.R.Ramanathan
Party in person
For Respondents : Mr.Sekar for R1 and R2,R3
Special Government Pleader

ORDER

This writ petition is directed against the order of the second respondent, the Director of Collegiate Education, dated 06.09.06 under which the second respondent ordered transferring the petitioner who was working as a lecturer in Physics department in Government Arts College, Ariyalur on administrative ground to Government Arts College, Pulankuruchi and also subsequent relieving order passed by the third respondent, the Principal of Government Arts College, Aiyalur relieving the petitioner as lecturer from the said College.

2.The writ petitioner who appears party in person challenges the said orders on the ground that he filed W.P.Nos.30279/2005 & 1819/2006 in respect of his increment and senior scale of pay which claim according to him were rejected by the respondents with malafide intention and the said writ petitions are posted in March 2007 for final disposal. According to the petitioner, even in that writ petitions he has made the officials in their personal names also and when there was a application filed for removal of the same, the same is posted along with the said main writ petitions. It was thereafter, with a malafide intention, which the fifth respondent has developed against the petitioner, the second respondent has ordered the transfer.

3.It is unfortunate to note in this case also, the petitioner has not only impleaded the Director of Collegiate Education as second respondent but also by his name as the fourth respondent as Dr.S.Mani. That apart having made the Principal of Government Arts College, Ariyalur who has passed one of the impugned orders as the third respondent, he has made C.Kandasamy Principal in charge of the said College also by name as the fifth respondent.

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4.The petitioner would also state that as per his claims, the transfer would be effected only if there are more than 50% of the sanctioned strength and in the case of request transfer, counselling is conducted. According to the petitioner, he being the permanent lecturer in the Physics Department, as against the sanctioned strength of eight lecturers in the third respondent College, he has not requested for any transfer and hence, the transfer order is illegal. He would also submit that after the retirement of one R.Ramalingam, the Head of the Department in Physics, in the third respondent College on 31.5.2006, the petitioner was the only permanent lecturer in the Physics department to whom the laboratory ought to have been handed over. The previous incumbent, R.Ramalingam, failed to hand over the same, according to the petitioner, the same was allowed by the fifth respondent, the Principal in charge. Therefore, since the petitioner has objected for the same, the fifth respondent has developed a malice against the petitioner. He would also state that even after the retirement of the said R.Ramalingam on 31.5.2006, he was re-appointed till the end of the academic year and he was allowed to continue as Head of the Physics Department and that was also challenged in a writ petition by making the then Director (Finance), C.Giri Renganathan in his personal name. The petitioner send many letters to the retired teacher to hand over the charge of Physics lab, however, the fifth respondent, Principal in charge personally came to the Department and referred to some of the Registers without furnishing the necessary registers to the petitioner. The list of many Registers were missing. When these shortcomings were intimated, the fifth respondent without ordering the outgoing Head of the Department in a proper manner, maliciously attempted to help him without any authority of law. The petitioner also furnished some of the instances to show as if the fifth respondent has been doing misdeeds. Therefore, according to him, the fifth respondent might have recommended that the petitioner should be transferred taking advantage of the fact that on one such occasion, when he came to this Court to conduct his case, he was absent in the College. He would also charge that the fifth respondent, principal in charge have been responsible for all the misdeeds in respect of physics laboratory. He would also state that the petitioner was given only 3 days for verification of various materials in the Physics laboratory and the mandatory registers were not given. According to the petitioner, the fifth respondent has colluded with the fourth respondent who is the Director of Collegiate Education and he has also made him as a individual person for having passed the impugned order.

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5.The second respondent has filed the counter affidavit. It is relevant to note that the second respondent, the Director of Collegiate Education, who has also been made as the fourth respondent in the individual capacity as Dr.S.Mani has filed the said counter affidavit. It is the specific case of the second respondent that the petitioner is in the habit of going on leave without any intimation and he is also having

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the habit of availing leave when there are ensuing public holiday. When the permission for leave is denied, the petitioner used to absent himself. According to the second respondent, the third respondent has informed on many occasion that the petitioner was not discharging his official duty as lecturer and evading his responsibilities and he was in the habit of disobeying the instructions of the Head of the Department. He also would submit that the transfer of the petitioner from the Government Arts College, Ariyalur to the Government Arts College, Pulankuruchi is only on the administrative ground and the petitioner was also relieved by the fifth respondent by his proceeding dated 7.9.2006 so as to facilitate him to join in the transferred place. The transfer was effected only taking into consideration of the students interest, since the students should not be affected by the attitude of the petitioner. It is also stated that the respondents have not even decided to proceed against the petitioner for his long absence. It is also stated by the second respondent that even in the earlier writ petitions filed by the petitioner, the petitioner has attributed imputation against the respondents and it has been the habit of the petitioner to attribute motive whenever he filed cases against the respondents. According to the second respondent, the action of the fourth and fifth respondents were nothing but the discharge of official duty. There is no specific allegation made against the fourth and fifth respondents in the personal capacity. It is also specifically denied that the allegations of biased against the respondents are unsustainable. It is also stated that the petitioner is transferred as per the Rule 11 of Tamil Nadu Collegiate Educational Service Rules, 1978.

6.It is also denied that the said R.Ramalingam has not handed over the laboratory equipment. Attributing motive as against the fifth respondent is only with an ulterior motive. It is also stated by the the second respondent that when once the petitioner is transferred to Pulankuruchi Government Arts College, he cannot complaint about any missing articles at Government Arts College, Ariyalur and he cannot assume the role of custodian of the college being the lecturer. The incumbent is to take charge and submit a list of missing items and it is premature to fix responsibility on any one. In view of the same, the respondents have prayed for dismissal of the writ petition.

7.The writ petitioner has filed a rejoinder in which it is stated that the very fact that the second respondent in the counter affidavit has stated that the petitioner is in service in the Government Arts College, Ariyalur, Trichy District, shows it is very hasty since the said College is not in the Trichy District. He also disputed the genuineness and propriety of the second respondent in filing the counter affidavit on behalf of the fifth respondent also. The petitioner, party in person, would mainly submit that the impugned order suffer from the following grounds;

1) The impugned order has been passed in a hasty manner

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2)The impugned order is passed without application of mind and hence it is malafide.

3)The order of transfer is biased, for the respondents to get over their pecuniary liabilities in respect of irregularities and missing articles in the third respondent College the order came to be passed.

4)The order of transfer is victimisation of an honest officer and

5)The order of transfer does not disclose any reason.

8.The petitioner would also submit that the mere reason for transfer is on administrative exigencies without any valid reason is not sufficient unless there is specific charge of malafide attributed on the respondents. The petitioner would also submit that the claim of malafide has to be sufficiently repudiated and he relied upon some of the judgments of the Tribunal. He would submit that the order of transfer is not valid. According to him, the order of transfer is bad and not genuine one. He would also rely upon the judgment of the Honourable Supreme Court reported in AIR 1956 SC 531 (D'SOUZA VS. STATE OF BOMBAY)wherein the Honourable Supreme Court has held that the malafide transfer is not valid.

9.On the other hand, Mr.Sekar, the learned Special Government Pleader would submit taking serious note of the conduct of the petitioner in making the second and third respondents in personal capacity by including them as the fourth and fifth respondents which cannot be encouraged. He would also submit that the petitioner has not given any instance to show any imputation or mala fide on the part of the respondents against him. That apart he would submit that the order of transfer is administrative in nature, especially in the circumstances, it is not even the case of the petitioner that he is not liable to be transferred and the authority who passed the impugned order is incompetent.

10.I have heard the petitioner, party-in-person, and the learned counsel for the first and second respondents who has argued on behalf of the respondents and perused the entire records. On the face of it, I have no hesitation to hold that this is the case of gross abuse of process of law. It is unfortunate that the petitioner being an educated person, working as a lecturer, in a respectful position, has chosen to make unnecessary allegations against the officials. It is not known as to why the second and third respondents who are the Director of Collegiate Education and the Principal of Government Arts College, Ariyalur are also made in the individual name as the fourth and fifth respondents especially in the circumstance, when there are absolutely no personal allegations against the fourth and fifth respondents. The only reason given by the petitioner is that the petitioner has been asking for the previous incumbent of the Head of the Department Physics to give stock of the various materials in the Physics laboratory and the fifth respondent has

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not taken any effective steps. On the other hand, on the retirement of the said previous incumbent he has been given extension as the Head of the Department till the end of the academic year and therefore according to the petitioner when this was pointed out, the fifth respondent developed a personal grudge against the petitioner and therefore he would have recommended the fourth respondent to pass the order of transfer which has resulted in the impugned order. The entire allegations are purely based on surmises and bereft of any cause. The reasons given by the petitioner through out in the affidavit is only vilification against the fourth and fifth respondents absolutely without any reason. It is just unbelievable that a lecturer in Physics department in the third respondent's College is finding fault with the Principal of the College on the basis that the previous Head of the Department of Physics has not handed over the equipments of the laboratory. It is not known as to how the fifth respondent be personally made liable for that and it is not even the case of the petitioner that the fifth respondent has not taken any effective steps in that regard. In the affidavit filed by the petitioner it is stated that the fifth respondent who is the Principal in Charge of the third respondent college has in fact gone to the department of Physics along with some Registers which shows that he has taken some steps for the purpose of getting Physics Department regularised. On the other hand, when it is the specific case of the respondents that the petitioner is in the habit of applying leave without any reason and that has not been repudiated except to say for the purpose of attending Court in various writ petitions filed by him he has abstained from attending College. I am of the considered view that this is unbecoming of a person holding a respectful position as lecturer of the Physics Department in the third respondent College. It is the duty of the petitioner to join in the transferred College. If only he has joined in the transferred college he could have been permitted to make representation, to the second respondent, regarding some of the difficulties which would have been experienced by him and there would have been some justification. On the other hand for the purpose of making transfer, the petitioner has made this Court as a forum for vaging vilification campaign against various respondents. A reference to the records show that the petitioner is in a habit of filing such writ petitions by making the individual persons and making allegations of mala fide against them. This Court is of the considered view that this must be considered seriously or otherwise it not only affects the dignity and decoram of this Court but also person like the petitioner will be encouraged to make this forum for the purpose of making false allegation which in fact would amount threatening the authorities.

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11.As far as the allegations regarding the imputation and malafide, a reading of the entire materials show that there are absolutely no reason to infer anything about the genuineness of such allegation. In view of the above facts and circumstance the writ petition fails and the same is dismissed with costs of Rs.5,000/- (Rupees five thousand only) to be paid by the petitioner to the fourth and fifth respondents. Consequently, connected miscellaneous petitions are also dismissed.

jikr

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1.Secretary to the Government,
Higher Education Department,
Fort St. George, Chennai-600 009.

2.The Director of Collegiate Education,
E.V.K.Sampath Building,
College Road, Chennai-600 006.

3.The Principal,
Government Arts College,
Ariyalur-621 713.

+ 3 ccs to Mr.R.Ramanathan,(Party in person)
Sr.No.9989.

+ 2 ccs to The Government Pleader, Sr.No.10321 and 10518.

KM(CO)
dcp/22.2.07

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